

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 91-208-T - ORDER NO. 92-74 ✓

FEBRUARY 19, 1992

IN RE: Application of D & R Trucking,) ORDER DENYING
Inc., Rt. 61-L, P.O. Box 364,) PETITION FOR
Harleyville, SC 29448, for a) RECONSIDERATION
Class F Certificate of Public)
Convenience and Necessity.)

This matter is before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration of Order No. 91-1106 (January 2, 1992) filed by D & R Trucking, Inc. (D & R or the Applicant). By Application filed March 28, 1991, D & R sought a Class F Certificate of Public Convenience and Necessity authorizing it to transport property as follows:

CEMENT, IN BAGS AND BULK: Between points and places in South Carolina, under contracts with Ford Redi Mix, Inc. and Blue Circle, Inc.

D & R's Application was later amended to read as follows:

CEMENT, IN BAGS AND BULK: Between points and places in South Carolina, under contract with Blue Circle, Inc.

By order dated January 2, 1992, the Commission denied D & R's Application.

In its Petition for Reconsideration D & R asserts that the substantial evidence of record supported the granting of its Application. Specifically, D & R contends that the evidence established it has sufficient equipment to allow it to perform under its contract with Blue Circle, Inc. (Blue Circle), that it

has the financial ability to arrange for additional equipment if necessary, and that the rates agreed to by D & R and Blue Circle are just and reasonable. The Commission disagrees and, therefore, denies the Petition for Reconsideration for reasons stated below.

1. D & R asserts that its contract with Blue Circle only requires Blue Circle to tender one pneumatic tanker load of cement per month for shipment to D & R and, consequently, its one pneumatic tanker can meet the requirements of the contract. The Commission disagrees.

Mr. Risher, President and sole shareholder of D & R, testified that D & R's one pneumatic tanker was currently fully utilized to haul bulk cement under contract with Blue Circle on an interstate basis. In addition, Mr. Risher testified that D & R anticipated hauling more than one tanker load of cement per month for Blue Circle on an intrastate basis and that it intended to purchase additional equipment to accommodate Blue Circle's needs. The Commission finds that this evidence fully supports its conclusion that D & R has insufficient equipment to meet Blue Circle's needs as specifically stated in the parties' contract and as anticipated by the Applicant.

2. D & R asserts that, contrary to the Commission's conclusion, it has the financial ability to obtain equipment necessary to provide service under its contract with Blue Circle. D & R contends the Commission only considered its current assets and liabilities but should have considered its total assets and liabilities. Specifically, D & R states that the balance sheet

filed with its Application indicates its total assets are \$222,895.41 and that while its total liabilities are \$278,313.000, \$60,000 of its liabilities are notes payable to Mr. Risher and, therefore, may be paid at his discretion.

The Commission finds it properly concluded that D & R is not in a financial condition to purchase additional equipment in order to meet Blue Circle's needs. Even if the Commission only considered D & R's total assets and liabilities and accepted the argument that \$60,000 of its liabilities are less important because they are owed to Mr. Risher,¹ D & R would still only have a net worth of \$4,582.14. This net worth does not reflect the \$375,000 of additional liability incurred by D & R since the filing of its Application in order to purchase additional trucks and trailers.

3. D & R asserts that the Commission erred by finding that the explanation of its rates under contract with Blue Circle was insufficient for the Commission to conclude that the rates were just and reasonable. The Commission disagrees.

26 S.C. Regs. 103-191(A)(1976) provides that "[t]he Commission shall...allow just and reasonable rates...for all motor carriers subject to its jurisdiction." 26 S.C. Regs 103-192 (1976) requires that "[e]very rate made, demanded, or received by any motor carrier...shall be just and reasonable."

Mr. Risher testified his former business associate had

1. The Commission does not accept this argument. The Commission finds that D & R's liability to Mr. Risher constitutes a debt to the Company just as if the debt was owed to an unrelated entity.

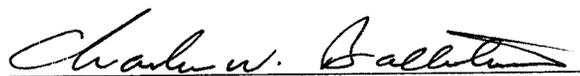
prepared the tariffs attached to D & R's March 28, 1991, Application and that his associate had informed him that the rates would allow D & R to make a profit. Mr. Risher stated he could not compare the rate submitted in D & R's Application with the rates of other motor carriers and that he had no explanation for the 5% increase noted on the tariff which was scheduled to take effect shortly after the Application was filed. Based on this testimony the Commission found it could not determine whether D & R's rates under contract with Blue Circle were just and reasonable. Accordingly, the Commission finds it properly concluded that its inability to determine whether D & R's rates were just and reasonable is supported by substantial evidence.

Based on the foregoing explanations, the Commission denies the Petition for Reconsideration of Order No. 91-1106.

IT IS SO ORDERED.


Chairman

ATTEST:


Executive Director

(SEAL)